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PATENT APPLICATION

ATTORNEY DOCKET NO. 100111157-1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): David E. Richardson
Application No.: 10/814,224
Filing Date: April 1, 2004

Confirmation No.: 5369
Examiner: Raj K. Jain
Group Art Unit: 2616

Title: METHOD AND SYSTEM OF MANAGING TRAFFIC IN A FIRST SET OF NODES OF A COMPUTER NETWORK

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on July 9, 2008.

- The fee for filing this Appeal Brief is \$510.00 (37 CFR 41.20).
 No Additional Fee Required.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

(a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

1st Month
\$120

2nd Month
\$460

3rd Month
\$1050

4th Month
\$1640

- The extension fee has already been filed in this application.
 (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$ 510. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

- A duplicate copy of this transmittal letter is enclosed.

Date: August 6, 2008

Respectfully submitted,

David E. Richardson

By _____

I hereby certify that this document is being filed by personal delivery to the Customer Service Window Randolph Building, 401 Dulany Street Alexandria, VA 22314, of the United States Patent & Trademark Office on the date indicated above.

By: Richard C. Keane 48360
(Attorney Signature and Reg. No.)

Patrick C. Keane
Attorney/Agent for Applicant(s)

Reg No. : 32,858
Date : August 6, 2008
Telephone : (703)838-6522



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)
David E. Richardson) Group Art Unit: 2616
Application No.: 10/814,224) Examiner: Raj K. Jain
Filed: April 1, 2004) Appeal No.: _____
For: METHOD AND SYSTEM OF)
MANAGING TRAFFIC IN A)
FIRST SET OF NODES OF A)
COMPUTER NETWORK)

APPEAL BRIEF

Mail Stop APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This appeal is from the decision of the Primary Examiner dated April 9, 2008 finally rejecting claims 1, 3-9, 11-16, 18-23 and 25-30, which are reproduced as the Claims Appendix of this brief.

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I. Real Party in Interest

The present application is assigned to Hewlett-Packard Development Company, L.P.. Hewlett-Packard Development Company, L.P. is the real party in interest, and is the assignee of Application No. 10/814,224.

II. Related Appeals and Interferences

The Appellant legal representative, or assignee, does not know of any other appeal or interferences which will affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

III. Status of Claims

Claims 1-30 were originally presented. Of those, dependent claims 2, 10, 17 and 24 were canceled by Appellant's Response dated January 25, 2008. Claims 1, 3-9, 11-16, 18-23 and 25-30 are currently pending in this application, all of which stood finally rejected by the Examiner's final Office Action dated April 9, 2008. Claims 1, 3-9, 11-16, 18-23 and 25-30 are being appealed.

IV. Status of Amendments

No amendments were filed after the final rejection dated April 9, 2008.

V. Summary Claimed Subject Matter

Appellant has disclosed a method and system of managing traffic in a first set of nodes of a computer network having a first set of nodes and a second set of nodes. As shown in Fig. 1, exemplary steps are illustrated for managing a computer network having first and second sets of nodes. For example, in block 102, a source associated with an amount of traffic over a first VLAN which exceeds a threshold is determined. This source can, for example, be outside a group of network elements assigned to the first VLAN (e.g., paragraph [0009]). In block 104, an indication of

each top talker source is automatically displayed in response to determining the source. A management computer can display an identifier of each such source, and can indicate the level of network traffic associated with each source (e.g., paragraph [00013]). Appellant has further disclosed that the first set of nodes can be any designated group of one or more nodes and can, for example, be designated a first VLAN; whereas the second set of nodes can be any designated group of one or more nodes and can, for example, be designated as a second VLAN (e.g., paragraph [0008]).

The foregoing features are broadly encompassed by Appellant's independent claims 1, 9, 16 and 23. For example, as recited in independent claim 1 and as exemplified in Fig. 2, a method of managing traffic in a first set of nodes (e.g., 234 or 236) of a computer network (e.g., 238) having a first set of nodes (e.g., 234 and 236) and a second set of nodes (e.g., lines 1-3 of paragraph [0002]; 224 of Fig. 2) is disclosed. Such a method, as further exemplified in Fig. 1, includes determining a source associated with an amount of network traffic over the first set of nodes which exceeds a threshold, the source being outside a group of network elements assigned to the first set of nodes (e.g., lines 4-6 of paragraph [0002]; 102); and automatically displaying an indication of the source in response to determining the source (e.g., lines 6 and 7 of paragraph [0002]; 104), wherein the first set of nodes (e.g., 234 and 236) is a first VLAN (e.g., 208) and the second set of nodes (e.g., 224) is a second VLAN (e.g., lines 3-6 of paragraph [0008]; 226).

As recited in independent claim 9, a computer is disclosed for managing traffic in a first set of nodes (e.g., 234 or 236) of a computer network (e.g., 238) having a first set of nodes (e.g., 234 and 236) and a second set of nodes (e.g., lines 1-3 of paragraph [0003]; 224 of Fig. 2). Such a computer includes a display (e.g., lines 3 and 4 of paragraph [0003]; 202 and 204); and a processor (e.g., 206) configured to determine a source associated with an amount of network traffic over a first set of nodes which exceeds a threshold (e.g., lines 4 and 5 of paragraph [0003]), the source being outside a group of network elements assigned to the first set of nodes (e.g., lines 6 and 7 of paragraph [0003]), the processor (e.g., 206) configured to automatically send to the display (e.g., 204) an indication of the source in response to determining the source (e.g., lines 7 and 8 of paragraph [0003]), wherein the first

set of nodes (e.g., 234 and 236) is a first VLAN (e.g., 208) and the second set of nodes (e.g., 224) is a second VLAN (e.g., lines 3-7 of paragraph [0008]; 226).

As recited in independent claim 16, a system (e.g., 200) is disclosed for managing traffic in a first set of nodes (e.g., 234 or 236) of a computer network (e.g., lines 1 and 2 of paragraph [0004]; 238). Such a system includes a first set of nodes (e.g., line 3 of paragraph [0004]; 234 and 236); and a computer (e.g., 202) coupled with the first set of nodes and configured to determine a source associated with an amount of network traffic over the first set of nodes which exceeds a threshold (e.g., lines 4 and 5 of paragraph [0004]; lines 2-4 of paragraph [00019]), the source being outside a group of network elements assigned to the first set of nodes (e.g., lines 6 and 7 of paragraph [0004]; lines 4 and 5 of paragraph [00019]), the computer configured to automatically display an indication of the source in response to determining the source (e.g., lines 7 and 8 of paragraph [0004]; lines 5-7 of paragraph [00019]), wherein the first set of nodes (e.g., 234 and 236) is a first VLAN (e.g., 208) and the second set of nodes (e.g., 224) is a second VLAN (e.g., lines 3-6 of paragraph [0008]; 226).

As recited in independent claim 23, a computer-readable medium containing a program (e.g., lines 6-8 of paragraph [0008]) is disclosed for managing traffic in a first set of nodes (e.g., 234 or 236) of a computer network (e.g., 238) having a first set of nodes and a second set of nodes (e.g., lines 1-3 of paragraph [0008]). As exemplified in Fig. 1, such a program includes determining a source associated with an amount of network traffic over the first set of nodes which exceeds a threshold (e.g., lines 1 and 2 of paragraph [0009]), the source being outside a group of network elements assigned to the first set of nodes (e.g., line 3 of paragraph [0009]; 102); and automatically displaying an indication of the source in response to determining the source (e.g., lines 1 and 2 of paragraph [00013]; 104), wherein the first set of nodes (e.g., 234 and 236) is a first VLAN (e.g. 208) and the second set of nodes (e.g., 224) is a second VLAN (e.g., lines 3-6 of paragraph [0008]; 226).

VI. Grounds of Rejection to be Reviewed on Appeal

The final Office Action presents the following grounds of rejection to be reviewed on appeal:

A. Claims 1, 3-6, 8, 9, 11-13, 15, 16, 18-20, 22, 23, 25-28 and 30 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,933,416 (Schenkel et al.) in view of U.S. Patent 6,421,719 (Lewis et al.).

B. Claims 7, 14, 21 and 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the Schenkel et al. patent, in view of the Lewis et al. patent, and further in view of U.S. Patent 6,085,243 (Fletcher et al.).

VII. Argument

A. The Rejection of Claims 1, 3-6, 8, 9, 11-13, 15, 16, 18-20, 22, 23, 25-28 and 30 Under 35 U.S.C. §103(a) as Being Unpatentable Over U.S. Patent 5,933,416 (Schenkel et al.) In View of U.S. Patent 6,421,719 (Lewis et al.)

The Examiner has failed to establish a prima facie case of obviousness based on U.S. Patent 5,933,416 (Schenkel et al.) in combination with U.S. Patent 6,421,719 (Lewis et al.) to reject claims 1, 3-6, 8, 9, 11-13, 15, 16, 18-20, 22, 23, 25-28 and 30. Claims 1, 9, 16 and 23 are independent claims.

As Appellants have set forth of record, the Schenkel et al. patent discloses a data communication network 1 comprising various subnetworks, e.g. routers, serial lines, multiplexers, Ethernet.TM. local area networks (LANs), bridges, hubs, gateways, fiber rings, multibridges, fastpaths, mainframes, file servers and workstations (col. 2, lines 51-57). While the Schenkel et al. patent further discloses that such a network can be local, confined to a reign, span a continent, or span the world (col. 2, lines 57-61), the disclosure does not teach a source sending an amount of network traffic over a first set of nodes, the source being outside a group of network elements assigned to the first set of nodes, as recited in claim 1. Further, the Schenkel et al. disclosure, as relied upon by the Examiner, does not relate to VLANs, and would not have taught or suggested specifically 1) the first set of nodes being a first VLAN and 2) the second set of nodes being a second VLAN, as recited in claim 1. The Examiner, on page 2 of the final Office Action, admits that "Schenkel fails to disclose a first set of nodes and second set of nodes being a VLAN."

In regards to the Lewis et al. patent, the Examiner asserts on page 3 of the final Office Action, that "Lewis discloses a first set of nodes and second set of nodes being a VLAN", but merely relies on Fig. 5B of the Lewis et al. patent. The Examiner then concludes "Thus it would have been obvious at the time the invention was made to incorporate the teachings of Lewis with Schenkel so as to contain traffic within a specific group and allow for network flexibility of future growth as needed by adding additional nodes." Appellant respectfully disagrees with the Examiner's ultimate conclusion.

The Lewis et al. patent relates to configuration management of managed objects based on performance data. Specifically, the Examiner appears to rely on Fig. 5B of the Lewis et al. patent in which it is shown a hypothetical node C of VLAN1 performing a majority of its communications with nodes D and E VLAN2. However, the Lewis et al. patent merely describes "capacity planner 305 and/or synthesizer 403 may issue commands to the network switches 1-4 as needed to perform a reassignment of node C to VLAN2." This and other passages of the Lewis et al. patent, which the Examiner appears to relies upon, do not relate to determining a source associated with an amount of network traffic over the first set of nodes which exceeds a threshold, the source being outside a group of network elements assigned to the first set of nodes, as recited in Appellant's independent claim 1. Appellant's independent claims 9, 16 and 23 are directed to a computer, a system, and a computer-readable medium containing a program, respectively, each of which likewise reciting aforementioned claimed features for managing traffic in a first set of nodes of a computer networking.

Further, Appellant's recited outcome/result is different from the teachings of the applied references. For example, Appellant's claim 1 recites automatically displaying an indication of the source in response to determining the source, wherein the first set of nodes is a first VLAN and the second set of nodes is a second VLAN. In contrast, the Lewis et al. patent relates to "reassignment of node C to VLAN2" (col. 14, lines 14-19). Likewise, the Schenkel et al. patent seeks to indicate the presence of "a network communication path between a pair of the devices in the event that the correlation of traffic out of one of the pair of the devices and into another of the pair of the devices is in excess of a predetermined threshold" (co. 2,

lines 25-32). These teachings of the applied references 1) do not relate to the Appellant's recited structural features of determining a source associated with an amount of network traffic over the first set of nodes which exceeds a threshold, the source being outside a group of network elements assigned to the first set of nodes, wherein the first set of nodes is a first VLAN and the second set of nodes is a second VLAN, and 2) do not achieve the claimed results of automatically displaying an indication of the source in response to determining the source.

At least for these reasons, the Schenkel et al. patent and the Lewis et al. patent, considered individually or in the combination as suggested by the Examiner, would not have taught or suggested determining a source associated with an amount of network traffic over the first set of nodes which exceeds a threshold, the source being outside a group of network elements assigned to the first set of nodes; and automatically displaying an indication of the source in response to determining the source, wherein the first set of nodes is a first VLAN and the second set of nodes is a second VLAN, as recited in claim 1, and as similarly recited in claims 9 16, and 23.

For the foregoing reasons, the Examiner has not established a *prima facie* case of obviousness in rejecting Appellant's independent claims 1, 9, 16 and 23. Hence, Appellant's independent claims 1, 9, 16 and 23 are allowable over the Schenkel et al. patent and the Lewis et al. patent. The remaining claims depend from the respective independent claim, and recite additional advantageous features which further distinguish over the documents relied upon by the Examiner.

For at least these reasons, the rejection of claims 1, 3-6, 8, 9, 11-13, 15, 16, 18-20, 22, 23, 25-28 and 30 is improper. Accordingly, the rejection should be reversed.

B. The Rejection of Dependent Claims 7, 14, 21 and 29 Under 35 U.S.C. §103(a) as Being Unpatentable Over the Schenkel et al. Patent, in view of the Lewis et al. Patent, and Further in View of U.S. Patent 6,085,243 (Fletcher et al.)

The Examiner has failed to establish a *prima facie* case of obviousness based on the Schenkel et al. patent in combination with the Lewis et al. patent and U.S. Patent 6,085,243 (Fletcher et al.) to reject dependent claims 7, 14, 21 and 29.

Appellant has set forth arguments that the Examiner has not established a *prima facie* case of obviousness in rejecting Appellant's independent claims.

Dependent claims 7, 14, 21 and 29 each depend from independent claims 1, 9, 16 and 23, respectively. At least for the reasons as set forth, the Schenkel et al. patent in combination with the Lewis et al. patent, also would not have taught the totality of the claimed features of claims 7, 14, 21 and 29, each depend from independent claims 1, 9, 16 and 23, respectively.

The Fletcher et al. patent does not cure the deficiencies of the Schenkel et al. patent and the Lewis et al. patent. The Fletcher et al. patent was applied by the Examiner for its disclosure of an RMON manager used in conjunction with a probe. However, the Fletcher et al. patent does not teach a source sending an amount of network traffic over a first set of nodes, the source being outside a group of network elements assigned to the first set of nodes, as recited in claim 1. Further, the Fletcher et al. patent, as relied upon by the Examiner, does not relate to VLANs, and would not have taught or suggested specifically 1) the first set of nodes being a first VLAN and 2) the second set of nodes being a second VLAN, as recited in claim 1.

Even if the references could have been combined in the manner asserted by the Examiner, the combination would not have resulted in a method of managing traffic in a first set of nodes of a computer network having a first set of nodes and a second set of nodes, including among other features, determining a source associated with an amount of network traffic over the first set of nodes which exceeds a threshold, the source being outside a group of network elements assigned to the first set of nodes, wherein the first set of nodes is a first VLAN and the second set of nodes is a second VLAN, as recited in claim 1, and as similarly recited in claims 9, 16 and 23. Because claims 7, 14, 21 and 29 each depend from independent claims 1, 9, 16 and 23, respectively; claims 7, 14, 21 and 29 are also allowable.

For at least these reasons, the rejection of claims 7, 14, 21 and 29 is improper. Accordingly, the rejection should be reversed.

Conclusion

The Examiner has failed to establish a prima facie case of obviousness in rejecting Appellant's claims 1, 3-6, 8, 9, 11-13, 15, 16, 18-20, 22, 23, 25-28 and 30; and has not established a prima facie case of obviousness in rejection Appellant's

claims 7, 14, 21 and 29. A reversal of the final rejection, and allowance of the present application, are therefore requested.

VIII. Claims Appendix

See attached Claims Appendix for a copy of the claims involved in the appeal.

IX. Evidence Appendix

Evidence Appendix as attached indicates: NONE.

X. Related Proceedings Appendix

Related Proceedings as attached indicates: NONE.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date August 6, 2008

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VIII. CLAIMS APPENDIX

The Appealed Claims

1. A method of managing traffic in a first set of nodes of a computer network having a first set of nodes and a second set of nodes comprising:
determining a source associated with an amount of network traffic over the first set of nodes which exceeds a threshold, the source being outside a group of network elements assigned to the first set of nodes; and
automatically displaying an indication of the source in response to determining the source, wherein the first set of nodes is a first VLAN and the second set of nodes is a second VLAN.
2. (Canceled)
3. The method of claim 1, wherein the indication is a user name associated with the source.
4. The method of claim 1, wherein the source is assigned to the second VLAN, the method comprising:
reassigning the source to the first VLAN in response to determining the source.
5. The method of claim 4, wherein the source is automatically reassigned.

6. The method of claim 1, wherein traffic data is obtained from the first VLAN using a network management protocol.

7. The method of claim 6, wherein the traffic data is obtained using a remote monitoring protocol.

8. The method of claim 1, wherein the determination of the source includes determining the top sources of traffic on the first VLAN.

9. A computer for managing traffic in a first set of nodes of a computer network having a first set of nodes and a second set of nodes, the computer comprising:

a display; and

a processor configured to determine a source associated with an amount of network traffic over a first set of nodes which exceeds a threshold, the source being outside a group of network elements assigned to the first set of nodes, the processor configured to automatically send to the display an indication of the source in response to determining the source, wherein the first set of nodes is a first VLAN and the second set of nodes is a second VLAN.

10. (Canceled)

11. The computer of claim 9, wherein the indication is a user name associated with the source.

12. The computer of claim 9, wherein the source is assigned to the second VLAN, and wherein the processor is configured to reassign the source to the first VLAN in response to determining the source.

13. The computer of claim 9, wherein the processor is configured to obtain traffic data from the first VLAN using a network management protocol.

14. The computer of claim 13, wherein the processor is configured to obtain traffic data using a remote monitoring protocol.

15. The computer of claim 9, wherein the processor is configured to identify any sources of traffic which are associated with a given threshold of traffic on the first VLAN.

16. A system for managing traffic in a first set of nodes of a computer network comprising:

a first set of nodes; and
a computer coupled with the first set of nodes and configured to determine a source associated with an amount of network traffic over the first set of nodes which exceeds a threshold, the source being outside a group of network elements assigned to the first set of nodes, the computer configured to automatically display an indication of the source in response to determining the source, wherein the first set of nodes is a first VLAN and the second set of nodes is a second VLAN.

17. (Canceled)

18. The system of claim 16, wherein the indication is a user name associated with the source.

19. The system of claim 16, wherein the source is assigned to the second VLAN within the system, and wherein the computer is configured to reassign the source to the first VLAN in response to determining the source.

20. The system of claim 16, wherein the computer is configured to obtain traffic data from the first VLAN using a network management protocol.

21. The system of claim 20, wherein the computer is configured to obtain traffic data from the first VLAN using a remote monitoring protocol.

22. The system of claim 16, wherein the computer is configured to identify any sources of traffic which are associated with a given threshold of traffic on the first VLAN.

23. A computer-readable medium containing a program for managing traffic in a first set of nodes of a computer network having a first set of nodes and a second set of nodes, the program comprising:

determining a source associated with an amount of network traffic over the first set of nodes which exceeds a threshold, the source being outside a group of network elements assigned to the first set of nodes; and

automatically displaying an indication of the source in response to determining the source, wherein the first set of nodes is a first VLAN and the second set of nodes is a second VLAN.

24. (Canceled)

25. The computer-readable medium containing a program of claim 23, wherein the indication is a user name associated with the source.

26. The computer-readable medium containing a program of claim 23, wherein the source is assigned to the second VLAN, the method comprising:

reassigning the source to the first VLAN in response to determining the source.

27. The computer-readable medium containing a program of claim 26, wherein the source is automatically reassigned.

28. The computer-readable medium containing a program of claim 23, wherein traffic data is obtained from the first VLAN using a network management protocol.

29. The computer-readable medium containing a program of claim 28,
wherein the traffic data is obtained using a remote monitoring protocol.

30. The computer-readable medium containing a program of claim 23,
wherein the determination of the source includes identifying any sources of traffic
which are associated with a given threshold of traffic on the first VLAN.

IX. EVIDENCE APPENDIX

NONE.

X. RELATED PROCEEDINGS APPENDIX

NONE.